

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Green Mountain Power Corporation

Docket Nos. ER01-989-002
ER01-989-003

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND TARIFF
SHEETS

(Issued November 2, 2004)

1. In this order we accept an amended updated market power analysis filed by Green Mountain Power Corporation (Green Mountain). We also accept certain revised tariff sheets filed by Green Mountain. As discussed below, we conclude that Green Mountain satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Green Mountain's next updated market power analysis is due three years from the date of this order.

Background

2. On July 2, 2004, as amended on August 26, 2004, Green Mountain filed an updated market power analysis pursuant to the Commission's order granting Green Mountain authority to sell electric energy and capacity at market-based rates.¹ Green Mountain states that its updated market power analysis confirms that there have been no material changes that might affect Green Mountain's authorization to continue to sell power at market-based rates. Green Mountain also submitted revised tariff sheets² to its market-based rate tariff to include the market behavior rules, required by the Commission

¹ *Green Mountain Power Corp.*, Docket Nos. ER01-989-000 and ER01-989-001, July 3, 2001 (unpublished letter order).

² Designated as FERC Electric Tariff Original Volume No. 4, First Revised Sheet No. 8 (superseding Original Sheet No. 8) and Original Sheet No. 9.

in its Market Behavior Rules Order,³ which establishes behavioral rules designed to provide market participants adequate opportunity to detect, and the Commission to remedy, market abuses. Accordingly, the Commission adopted six behavioral rules: unit operations, market manipulation; communications; reporting; record retention; and related tariffs. All market-based rate sellers were directed to include the market behavior rules in their market-based rate tariffs. Green Mountain has filed the Market Behavior Rules governing market-based rate sellers' conduct in the wholesale power market, as set forth by the Commission.

3. Green Mountain's inclusion of the market behavior rules meets our requirements and is hereby accepted. In the Market Behavior Rules Order, we permitted market-based rate sellers to delay a filing to amend their tariffs to include the Market Behavior Rules until such time as they filed any other amendment to their market-based rates tariff or (if earlier) when they made their three-year update filings. We stated, however, that notwithstanding this time allowance, as applicable to sellers' compliance filings, the effective date for the Market Behavior Rules would be 30 days from the date of issuance of the Market Behavior Rules Order – *i.e.*, December 17, 2003. Accordingly, Green Mountain's tariff revisions are effective December 17, 2003.

4. Green Mountain is an investor-owned utility with generation, transmission and distribution assets located in the State of Vermont. Green Mountain operates within the ISO New England (ISO-NE) market.

Procedural Matters

5. Notice of Green Mountain's July 2, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 42,151 (2004), with comments due by July 23, 2004. Notice of Green Mountain's August 26, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 53,908 (2004), with comments due by September 3, 2004. None was filed.

Discussion

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. In order for an affiliate of a transmission-owning public utility to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an open access

³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order).

transmission tariff (OATT). The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.

7. The Commission's policy has been that entities that have received market-based rate authority submit an updated market power analysis on a three-year basis so that the Commission may assess whether the applicant continues to satisfy the Commission's market power concerns.⁴ The Commission also reserves the right to require such an analysis at any time.

Generation Market Power

8. In an order issued on April 14, 2004,⁵ the Commission adopted two indicative screens for assessing generation market power: the pivotal supplier screen and the market share screen. The pivotal supplier screen evaluates the potential of an applicant (including its affiliates) to exercise market power based on the control area market's annual peak demand. The market share screen seasonally evaluates the market share of the uncommitted capacity of an applicant and its affiliates. Together, the pivotal supplier screen and the wholesale market share screen give a reasonable indication of whether an applicant has market power. Green Mountain has provided a generation market power analysis pursuant to the requirements of the Commission's April 14 Order using ISO-New England (ISO-NE) as the relevant geographic market. Green Mountain states that it passes both indicative screens in that market. Accordingly, the Commission finds that Green Mountain satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. Green Mountain estimates simultaneous import capability into ISO-NE. As discussed in the April 14 and July 8 Orders, the Commission replaced the use of total transfer capability (TTC) with simultaneous transmission import capability as the appropriate measure of the transmission capability available for imports. The Commission reiterates that using TTC as a proxy for simultaneous transmission import capability is insufficient because it assumes an unrealistically high degree of transmission access for competitors. In the instant proceeding, Green Mountain passes both indicative screens without considering competing supplies imported into the ISO-NE market. Green Mountain has made an appropriate simplifying assumption by not including imported competing supplies in its study.

⁴ See, e.g., *Western Resources, Inc., et al.*, 94 FERC ¶ 61,050 at 61,247 (2001); *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367 at 62,209 (1990).

⁵ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

Transmission Market Power

10. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an OATT on file before granting such authorization. Green Mountain states that its transmission system consists of a discrete set of low voltage transmission lines including approximately two miles of 115 kV transmission lines. Green Mountain states that both Green Mountain and its transmission-owning affiliate, Vermont Electric Power Company, operate their transmission facilities pursuant to OATTs on file with the Commission.⁶ Accordingly, the Commission finds that Green Mountain satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

11. Green Mountain states that neither Green Mountain nor its affiliates through ownership of inputs are able to erect other barriers to entry. Green Mountain states that there are no other significant barriers to entry in the relevant markets for the sale of power and energy. Further, Green Mountain argues that in *Central Vermont Public Service Corporation*, 83 FERC ¶ 61,166 (1998), the Commission concluded that there are no barriers to entry in the electricity market in Vermont about which the Commission should be concerned. Based on Green Mountain's representations, the Commission is satisfied that neither Green Mountain nor its affiliates can erect barriers to entry.

Affiliate Abuse

12. The Commission is also concerned with the potential for affiliate abuse and reciprocal dealing.⁷ Green Mountain notes that the Commission has expressed concerns over the potential for affiliate abuse between traditional electric utility operating companies that serve retail and wholesale requirements customers and their power marketing affiliates. Green Mountain states that it does not have any such affiliates. Nevertheless, as a precautionary measure and in order to obviate any potential concerns regarding affiliate abuse, Green Mountain states that its market-based rate tariff contains a code of conduct that would govern Green Mountain's relationship with a power marketing affiliate and is consistent with the Commission's requirements. The Commission finds that Green Mountain satisfies the Commission's concerns with regard to affiliate abuse.

⁶ *Green Mountain Power Corp.*, Docket No. OA97-709-000 (Feb. 24, 1999) (unpublished letter order); *Vermont Electric Power Co.*, Docket No. ER00-979-000 (Mar. 7, 2000) (unpublished letter order).

⁷ See, e.g., *Heartland Energy Services Inc.*, 68 FERC ¶ 61,223 at 62,062 (1994).

Reporting Requirements

13. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁹

14. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.¹⁰ Accordingly, the change in status reporting obligation for Green Mountain is subject to the outcome of the rulemaking.

15. Green Mountain is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

⁹ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁰ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).

The Commission Orders:

(A) Green Mountain's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Green Mountain's revised tariff sheets are hereby accepted for filing, effective December 17, 2003, as discussed in the body of this order.

(C) Green Mountain's next updated market power analysis is due within three years of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.